

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



IN THE MATTER OF:)

New Song Family Church)

Demolition and Burning – Church Buildings)
Decatur, Morgan County, Alabama)

CONSENT ORDER No. 17-____-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and New Song Family Church (hereinafter, the “Church”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 22-22A-16, (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Les Jones is the Pastor of the Church, and acted on the Church’s behalf to demolish and burn buildings on the Church site located at 4309 U.S. Highway 31, Decatur, Morgan County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer

and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The U.S. Environmental Protection Agency's National Emission Standard for Hazardous Air Pollutants (NESHAP), found at 40 C.F.R. Part 61, Subpart M, is incorporated by reference in ADEM Admin. Code r. 335-3-11-.02(12).

5. 40 C.F.R. § 61.141 defines regulated asbestos-containing material (RACM) as Friable, Category I nonfriable, and Category II nonfriable.

6. 40 C.F.R. § 61.145(b)(3)(i) requires the owner or operator of a demolition or renovation activity for a subject facility to provide written Notice of Intention to Demolish or Renovate (hereinafter, "Notice of Demolition") at least ten workdays before demolition, asbestos stripping or removal work, or any other activity which disturbs the asbestos, begins.

7. 40 C.F.R. § 61.141 defines a facility as any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units).

8. 40 C.F.R. § 61.145(c)(1) requires the removal of all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

9. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that "...open burning must take place on the property on which the combustible fuel originates."

10. ADEM Admin. Code r. 335-3-3-.01(2)(b)4 states that "Only vegetation and untreated wood may be burned. It is unauthorized to open burn heavy oils, asphalt

products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash.”

DEPARTMENT'S CONTENTIONS

11. On April 28, 2017, the Alabama Forestry Commission reported to the Department that open burning of demolished buildings was being conducted at the Church site.

12. On April 28, 2017, the Department followed-up on the report and investigated the Church site, which revealed that two buildings had been demolished and were in the process of being burned.

13. On May 8, 2017, the Department issued a Notice of Violation (“NOV”) to the Church requesting compliance information, with a response due to be received by the Department no later than June 6, 2017.

14. On May 25, 2017, the Department received a response to the NOV from the Church stating that no asbestos inspections of the buildings were performed prior to being demolished.

15. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty

assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Church did not submit the required Notification of Demolition or abate the buildings of asbestos-containing materials before demolition, which could have exposed workers and others nearby to elevated levels of asbestos fibers. Additionally, the Church conducted illegal open burning of the demolished buildings and the Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be some care taken by the Church who contacted their local city building department and local fire department for approval.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: While the Church may have accrued some economic benefit, the Department is unable to quantify the benefit.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There appeared to be no efforts by the Church to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Church has no known prior violations of asbestos regulations with the Department.

F. THE ABILITY TO PAY: The Church has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty

herein is appropriate (*See* “Attachment A” which is hereby made a part of the Department’s Contentions).

16. The Department neither admits nor denies the Church’s contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without unwarranted expenditure of State resources in prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CHURCH’S CONTENTIONS

17. The Church neither admits nor denies the Department’s contentions. The Church consents to abide by the terms of this Consent Order and pay the civil penalty assessed herein.

ORDER

THEREFORE, the Church, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Church agree to enter into this Consent Order with the following terms and conditions:

A. The Church agrees to pay to the Department a civil penalty in the amount of \$500.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days

from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Church agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Church agrees, that immediately upon receipt of this Order and continuing thereafter, to comply with 40 C.F.R. Part 61, Subpart M, as adopted by ADEM Admin. Code r. 335-3-11-.02, particularly as it applies to renovation and demolition operations, and ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4, as applied to open burning.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations which are cited in this Consent Order.

F. The Church agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Church agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Church also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Church shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Church, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Church) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increase costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Church, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Church agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning

the factual circumstances reference herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Church shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action addresses new matters not raised in this Consent Order.

I. The Department and the Church agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Church does hereby waive any hearing on the terms and conditions of the same.

J. The Department and the Church agree that this Order shall not affect its obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Church agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Church agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Church agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Church agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State, or local law, and shall not be construed to waive or relieve the Church of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.


NEW SONG FAMILY CHURCH

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

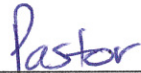


(Signature of Authorized Representative)


Lance R. LeFleur
Director



(Printed Name)



(Printed Title)



(Date)

(Date Executed)

ATTACHMENT A

New Song Family Church

Demolition and Open Burning of Buildings at New Song Family Church Site Decatur, Morgan County

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to follow Asbestos/Demolition Regulation (NESHAP)	1	\$300	\$0	\$0	
Illegal open burning	1	\$200	\$0	\$0	
					Total of Two Factors
TOTAL PER FACTOR		\$500	\$0	\$0	\$500

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	

Economic Benefit (+)	
Amount of Initial Penalty	
Total Adjustments (+/-)	
FINAL PENALTY	\$500.00

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.